



12-8-06

JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|---|---|----------------------|------------------------|
| In re United States Patent Application of: |) | Docket No.: | 4240-131 |
| Applicants: |) | Conf. No.: | 4427 |
| Application No.: |) | Art Unit: | 1636 |
| Date Filed: |) | Examiner: | QIAN, Celine X. |
| Title: |) | Customer No.: | 23448 |
| INTRACELLULAR DELIVERY OF OSTEOINDUCTIVE PROTEINS AND PEPTIDES |) | | |

EXPRESS MAIL CERTIFICATE

I hereby certify that I am mailing the attached documents to the
Commissioner for Patents on the date specified, in an envelope
addressed to: Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450 and Express Mailed under the
provisions of 37 CFR 1.10.

Donna Donovan

December 7, 2006

Date

EO 012 510 615 US

Express Mail Number

**RE-SUBMISSION OF THIRD-PARTY SUBMISSION OF PATENTS OR
PUBLICATIONS IN U.S. PATENT APPLICATION NO. 10/806,915 PUBLISHED ON
OCTOBER 7, 2004 AS U.S. PATENT PUBLICATION NO. 2004/0197867; NOTICE OF
ERROR BY USPTO AND PRIOR REFUSAL OF ENTRY**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

A review of the public file history of records of the above-identified application has revealed that the Third-Party Submission filed by the undersigned attorney on November 15, 2005 was not entered by the USPTO.

Specifically, the document in such file history contains the hand-written notation "NOT ENTERED/UNTIMELY" followed by a signature, the date 11/28/05 and the stamp of William R. Dixon, Jr., Special Program Examiner.

The refusal of the USPTO to enter the Third-Party Submission of Patents or Publications in this application was error and at odds with the provisions of 37 C.F.R. §1.99 ("THIRD-PARTY SUBMISSION IN PUBLISHED APPLICATION").

Specifically, 37 C.F.R. §1.99 provides that "submission under this section must be filed within two months from the date of publication of the application... or prior to the mailing of a Notice of Allowance... whichever is earlier. Any submission under this section not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier and must also be accompanied by the processing fees set forth in §1.17(i)."

The undersigned attorney's Third-Party Submission on November 15, 2005 fully complied with the foregoing provision, in that such submission could not have been submitted to the Office earlier, for the reason expressly stated in such submission that "neither the undersigned attorney nor the third party represented by the undersigned attorney, had knowledge of the references cited herein [in the Third-Party Submission] until October, 2005, when the references were discovered during a thorough search of the prior art pertaining to the subject patent application."

Further, in addition to furnishing the specific basis for filing under 37 C.F.R. §1.99(e), the Third-Party Submission submitted by the undersigned attorney included payment as specified in 37 C.F.R. §1.99, and such submission included a listing of the patents and publications submitted for consideration by the Office, a copy of each listed patent or publication and Certificate of Service evidencing the serving of such document on the attorney of record of the applicant.

The Third-Party Submission was fully in proper form for entry under the provisions of 37 C.F.R. §1.99.

Accordingly, enclosed and re-submitted herewith is a true and exact copy of the prior Third-Party Submission, with the request that the USPTO enter such document and the references therein, in the record of the file history, and that the examiner involved with this application consider such references as bearing on the patentability of the claims pending in the application.

Authorization also is hereby given to charge the amount of any additional fee or charge properly payable in connection with this Re-Submission, to Deposit Account No. 08-3284 of Intellectual Property/Technology Law.

For the sake of good order, this Re-Submission has also been served on counsel for the applicant, and a corresponding Certificate of Service is enclosed, in evidence thereof.

Respectfully submitted,



Steven J. Hultquist

Reg. No. 28,021

Attorney for Third Party

INTELLECTUAL PROPERTY/

TECHNOLOGY LAW

Phone: (919) 419-9350

Fax: (919) 419-9354

Attorney File No.: 4240-131

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2006, a true and correct copy of the foregoing RE-SUBMISSION OF THIRD-PARTY SUBMISSION OF PATENTS OR PUBLICATIONS IN U.S. PATENT APPLICATION NO. 10/806,915 PUBLISHED ON OCTOBER 7, 2004 AS U.S. PATENT APPLICATION PUBLICATION NO. 2004/0197867 was served via First Class U.S. Mail on the attorney of record for the applicants:

Carolyn S. Elmore, Esq.
Registration No. 37,567
ELMORE, CRAIG & VANSTONE, P.C.
209 Main Street
Chelmsford, MA 01863



Donna Donovan

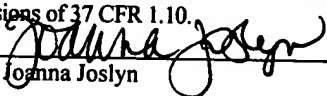


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addressed to: Commissioner for Patents, P.O. Box 1450,
Alexandria, VA 22313-1450 and Express Mailed under the
provisions of 37 CFR 1.10.


Joanna Joslyn

November 15, 2005

Date

EO 006 525 885 US

Express Mail Label Number

**THIRD-PARTY SUBMISSION OF PATENTS OR PUBLICATIONS IN U.S. PATENT
APPLICATION NO. 10/806,915 PUBLISHED ON OCTOBER 7, 2004 AS U.S. PATENT
PUBLICATION NO. 2004/0197867**

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Pursuant to 37 C.F.R. §1.99, the attention of the Patent and Trademark Office is hereby directed to the references listed on the attached Third-Party Submission of Patents or Publications in a Published Application.

Further enclosed herewith are:

(1) a copy of the listed references;

- (2) a Credit Card Payment form authorizing the Office to charge the \$310.00 official fees, which includes the \$180.00 fee set forth in §1.17(p) as required by 37 C.F.R. §1.99(b) and the \$130.00 processing fee set forth in §1.17(i) as required by 37 C.F.R. §1.99(e), to the credit card specified therein; and
- (3) a self-addressed postcard for the official acknowledgement by the Office that this Submission has been received.

This Submission could not have been submitted to the Office earlier, because neither the undersigned attorney nor the third party represented by the undersigned attorney, had knowledge of the references cited herein until October, 2005, when the references were discovered during a thorough search of the prior art pertaining to the subject patent application.

Therefore, this Submission complies with the requirements of 37 C.F.R. §1.99(e), with payment of the \$130.00 processing fee set forth in §1.17(i).

This Submission is concurrently served upon the attorney of record for the applicants in accordance with the requirements of 37 C.F.R. §1.99(c) and §1.248. A certificate of service is attached.

It is respectfully requested that the information contained in the attached Third-Party Submission of Patents or Publications in a Published Application be expressly considered during the prosecution of this application, and that the references be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

Respectfully submitted,



Steven J. Hultquist
Reg. No. 28,021
Attorney for Third Party

**INTELLECTUAL PROPERTY/
TECHNOLOGY LAW**
Phone: (919) 419-9350
Fax: (919) 419-9354
Attorney File No.: 4240-131



**THIRD-PARTY SUBMISSION
OF PATENTS OR
PUBLICATIONS IN A
PUBLISHED APPLICATION**

Sheet 1 of 1

COMPLETE IF KNOWN

| | |
|------------------------|-----------------|
| Application Number | 10/806,915 |
| Filing Date | March 23, 2004 |
| First Named Inventor | TITUS, Frances |
| Art Unit | 1636 |
| Examiner Name | QIAN, Celine X. |
| Attorney Docket Number | 4240-131 |

NON-PATENT LITERATURE DOCUMENTS

| Examiner Initials* | Cite No. | Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, page(s), volume-issue number(s), publisher, city and/or country where published | T ² |
|--------------------|----------|---|----------------|
| | AA | Xiaoqing Guo, et al., "Transduction of Functionally Active TAT Fusion Proteins into Cornea," <i>Experimental Eye Research</i> , Vol. 78, Pages 997-1005 (2004). | |
| | AB | Michelle Becker-Hapak, et al., "TAT-Mediated Protein Transduction into Mammalian Cells," <i>Methods</i> , Vol. 24, Pages 247-256 (2001). | |
| | AC | Jeffrey L. Wrana, "Crossing Smads," <i>Science's Stake</i> , Vol. 23, Pages 1-9 (2000). | |
| | AD | Kristin A. Waite, "From Developmental Disorder to Heritable Cancer: It's All in the BMP/TGF- β Family," <i>Nature Reviews</i> , Vol. 4, Pages 763-773 (2003). | |
| | AE | Rik Derynck, et al., "Smad-dependent and Smad-independent Pathways in TGF- β Family Signalling," <i>Nature</i> , Vol. 425, Pages 577-584 (2003). | |
| | AF | Patricia Ducy, et al., "The Family of Bone Morphogenetic Proteins," <i>Kidney International</i> , Vol. 57, Pages 2207-2214 (2000). | |
| | AG | Douglas Hanahan, et al., "The Hallmarks of Cancer," <i>Cell</i> , Vol. 100, Pages 57-70 (2000). | |
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| Examiner signature | | Date Considered | |
|--------------------|--|-----------------|--|

*Examiner: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

² Applicant is to place a check mark here if English Translation is attached. All the foreign patents and publications that are not written in English language are accompanied by their respective English abstracts, which constitute concise explanation of relevance of the non-English patents and publications that satisfy the requirements of 37 C.F.R. §1.98(a)(3)(i), according to MPEP 609 III A(3).